SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 718.

MARY E. HUGHES, APPELLANT,

vs.

THE UNITED STATES.

No. 719.

THE UNITED STATES, APPELLANT,

vs.

MARY E. HUGHES.

APPEALS FROM THE COURT OF CLAIMS.

INDEX.

52336—12——1

1 I. *Original petition.*

Filed March 31, 1910.

In the Court of Claims.

MRS. MARY E. HUGHES
vs.
THE UNITED STATES. } No. 30606.

PETITION.

To the honorable the Court of Claims:

The petition of Mrs. Mary E. Hughes, a resident and citizen of the State of Illinois and county of Cook, respectfully shows:

1. That she owns and possesses that certain tract of land, and cotton plantation, situated in the State of Mississippi, and county of Bolivar, on the Mississippi River, opposite to Arkansas City, known as the Timberlake plantation; bounded on the north and west by the Mississippi River, on the east by lands of Chappe, Wilkinson, and Shelby, and on the south by lands of Duncan & Lep. Lewey, containing 1,500 acres of cleared land, 1,300 acres woodland, and 200 acres of batture.

2. That she owns and possesses that certain tract of land, and cotton plantation, situated in the State of Mississippi, and county of Warren, on or near the Mississippi River, about two miles below the corporate limits of the city of Vicksburg, known as the Wigwam plantation; bounded on the north by lands of Crandell heirs, on the east by lands of Stout & Roach, on the south by lands of Mattingly, and on the west by Dabney & McCabe, containing 150 acres of alluvial land, of which 100 acres is cleared and 50 acres woodland.

3. That before and at the time of the injuries complained of she owned and possessed that certain tract of land, and cotton plan-
2 tation, situated in the State of Louisiana and parish of Madison, on the Mississippi River, opposite to the city of Vicksburg, known as De Soto Island, bounded on the north by Lake Centennial, on the east by the Yazoo River, and on the south and west by the Mississippi River, containing 127 acres of cleared land and 100 acres of batture.

4. That before and prior to the year 1890 said plantations were, from their natural situation, comparatively high and secure from overflow by the flood waters of the Mississippi River, except at long intervals, and the occurrence of such overflows did not materially affect their productive capacity or their value.

5. That said plantations were highly improved, well stocked with tenants and laborers, yielded yearly large crops of cotton, cotton seed, corn, hay, and other products, and were then worth, and except for the injuries complained of would be now worth, the sum of eighty-five thousand, ten thousand, and twenty-five thousand dollars, respectively.

6. That for time beyond the memory of man the flood waters of the Mississippi River, passing Helena, Arkansas, where the highlands abut on the river, had escaped into the White River and Upper Tensas Basins, and passed in part through the Boeuf Cut-off into the Ouachita Basin, and in part down the Bayous Macon and Tensas, and on by the Atchafalaya River to the Gulf of Mexico, and if they ever reached the alluvial lands of the claimant in sufficient volume to flow them, were speedily reduced by crevasses on the west bank, which allowed them to escape into the basins and thus relieved the lands of the claimant, and all the resources of the State and local authorities had never been able to confine the said flood waters or to divert them from their natural flow.

7. That about the year 1883 the then existing levee system having been practically destroyed by the great flood of 1882, and the State and local authorities having no means of restoring them, the officers and agents of the United States, in pursuance of the act of Congress of 1879, creating the Mississippi River Commission, and of the subsequent acts for the improvement of the navigation of the Mississippi River, adopting the so-called Eads' plan, projected and have constructed and are constructing a system of public works for the purpose of so confining the flood waters of the river between lines of embankment or levees as to give increased elevation and velocity and force to the currents in order to scour and deepen the channel, and have thus caused an abnormal and increased elevation of at
3 least eight feet to the waters of the river at high water or flood stage; and for said purpose have adopted and made use of systems of public and private levees, originally constructed for the reclamation of overflowed lands on the west bank from the highlands of Arkansas to the mouth of the Red River, and from the mouth of the Red River to the Passes, and on the east bank from the highlands of Tennessee to Brunswick, and from Baton Rouge to the Passes, but from Brunswick to Baton Rouge, instead of constructing and adopting levees, have made use of the highlands skirting the river for said purpose, and have thus placed the lands of the claimant, and of others similarly situated, between the lines of embankment on the west bank, with an increased grade of ten feet, and the highlands on the east bank, in the adopted high-water bed of the river, and exposed to the destructive action of the currents of the river, thus confined, with such increased elevation, velocity, and force and have three times recommended that Congress make some provision for the adjustment of the equitable claims of the landowners in such cases, but that Congress has failed and neglected to make such provision, and this court has held that no action of Congress is necessary to give it jurisdiction and that the Government is under a constitutional obligation to make compensation.

8. That in pursuance of their said plan, the officers and agents of the United States have constructed, and maintain, a system of levees from Helena to the mouth of White River, and from the highlands of Arkansas to the Louisiana line, and have thus prevented the flood

waters of the Mississippi River from passing into the bayous Macon and Tensas, and Boeuf, Ouachita, and Atchafalaya Rivers, where they were wont to flow in times of high water, and have confined all of the flood waters within the main channel, made much narrower, and have brought them down on the lands of the claimant between the systems of embankment, and have thus caused a much greater volume to pass over the lands than ever before and to raise the river at those points much higher.

9. That in pursuance of their said plan, the officers and agents of the United States have constructed, and maintain, levees at the most important stations on the river, where the State and local authorities were unable to confine the flood waters, and have closed the outlets by which, in times of high water, the flood waters escaped into the basins, and have thus prevented the flood waters from passing into the Tensas and Ouachita Basins, where they were wont to flow
4 in times of high water and have confined the flood waters within the main channel, made much narrower, and have so obstructed, and are so obstructing, the passage of the flood waters below as to cause them to back up and overflow the lands of the claimant; and that the acts herein complained of were wholly and entirely the acts of the United States, and that the State and local authorities contributed nothing thereto, except in so far as they were compelled to raise their levees for their own protection.

10. That in pursuance of their said plan, the officers and agents of the United States, about the year 1898, instead of revetting the banks to prevent the destruction of their works opposite Arkansas City by the threatened erosion because of the failure of Congress to make the necessary appropriations called for, abandoned their said works and located and constructed a new line of levee at some distance from the banks of the river, and took and destroyed the property of the claimant for their said purpose. That said new levee threw out the whole plantation of the claimant, with the buildings and improvements thereon, of the value of $85,000.00, exposed to the destructive action of the currents of the river, thus confined, with such increased elevation, velocity, and force, and thereby entirely destroyed their value. That under the levee conditions existing prior to the closing of the basins and the diversion of the flood waters from their natural course, and the confinement of the increased volume by the works of the United States aforesaid, said lands, although exposed, would have needed no protection, and would still be susceptible of cultivation, and valuable as batture lands, but that, subjected as they are to the action of the currents of the river, with the increased velocity and force, and to the repeated flowings, situated as they now are between the levee systems, in the artificial bed of the river, they have become a part of the bed of the stream, and practically taken for the uses of the United States aforesaid.

11. And are so raising, enlarging, and strengthening, adding to and constructing such levees as to cause the lands of the claimant, so situated, to be flowed repeatedly and continuously by the waters

of the river, thus confined, and to destroy the crops growing and grown thereon, and to drown the live stock, and to undermine and wash away the buildings, fences, and other improvements, and to fill up the drains and ditches, and to wash off the soil, and to cover the lands with superinduced additions of water, earth, sand, and gravel, and to entirely destroy their value.

5 12. That by reason of the premises aforesaid, the lands of the claimant, which before the undertaking by the United States to improve the navigation of the river were, from their natural situation, comparatively high and secure from overflow, and needed no protection, have been flowed by the waters of the river, thus confined, in the years 1890, 1891, 1892, 1893, 1897, 1898, 1899, 1903, 1904, 1906, 1907 twice, 1908 four times continuously, and 1909 three times successively, and the crops growing and grown thereon have been each year destroyed by said overflows, so caused, and the live stock drowned, building and fences and other improvements undermined and washed away, and the ditches and drains filled up, and the soil washed off, and the lands covered with superinduced additions of water, earth, sand, and gravel, so as to render them unfit for use and to entirely destroy their value and to compel their abandonment, to the injury of the claimant, as follows, to wit:

1890—To loss of rents	$1,816.00
1891—To loss of rents	1,816.00
1892—To loss of rents	1,816.00
1893—To loss of rents	1,816.00
1897—To loss of rents	1,816.00
1898—To loss of rents	1,816.00
1899—To loss of rents	1,816.00
1903—To loss of rents	13,816.00
1904—To loss of rents	13,816.00
1906—To loss of rents	13,816.00
1907—To loss of rents	12,800.00
1908—To loss of rents	12,800.00
1909—To loss of rents	12,800.00
To value of lands and improvements	108,000.00
Total	$200,560.00

And your petitioner says that this confinement and this precipitation and this backing of the waters of the river by the works of the United States for the improvement of the navigation of the river, so as to place the lands of the claimant in the artificial bed of the river and subject them to repeated and continuous flowings and to the destructive action of the currents, with such increased elevation, velocity, and force as to destroy the crops growing and grown thereon and to drown the live stock, and to wash away the buildings, fences, and other improvements, and to fill up the drains and ditches,

6 and to wash off the soil, and to cover the lands with superinduced additions of water, earth, sand, and gravel, and to render them unfit for cultivation, and to entirely destroy their value, and to compel their abandonment, is such a serious interruption to the common and necessary use of the property as to deprive the claimant of the beneficial use and to practically destroy the value,

and to be equivalent to a taking within the meaning of the constitutional provisions; and being done in pursuance of the acts of Congress authorizing it for the public benefit, and under the direction of the Mississippi River Commission and the Secretary of War, imposes on the Government an implied obligation to make compensation for the property so taken and destroyed.

That their said claims have been at all timese recognized by the said officers and agents of the United States, and assurances of compensation or protection have been at all times held out to them, by which they have been induced to refrain from pressing the said claims, and the Government is now equitably estopped to plead the statute of limitations, in bar of their claims for the crops and other property so taken and destroyed prior to the year 1904.

That no other action than as aforesaid has been had on this claim in Congress or by any of the departments.

That the claimant is the sole owner of this claim, and the only person interested therein; and that no assignment or transfer of this claim, or any part thereof, or interest therein, has been made.

That the claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets.

That the claimant is a citizen of the United States, and believes the facts as stated in this petition to be true.

And the claimant asks judgment for the sum of $200,560.00 (two hundred thousand five hundred and sixty dollars), and for the further sum of $12,800.00 (twelve thousand eight hundred dollars) for each year until just compensation is paid.

WADE R. YOUNG,
Attorney for Claimant.

STATE OF MISSISSIPPI, *County of Warren:*

Mrs. Mary E. Hughes being by me duly sworn, deposes and says that she is the claimant in this case, in the Court of Claims. That she has read the above petition, and that the matters therein stated are true to the best of her knowledge, information, and belief.

Mrs. MARY E. HUGHES.

Sworn to and subscribed before me, this 22d day of March, 1910.

[SEAL.]

W. L. NICHOLSON,
Notary Public.

7 II. *Amended petition.*

Filed by leave of court April 9, 1912.

To the honorable the Court of Claims:

The amended petition of Mary E. Hughes, the claimant in the above styled case, respectfully shows:

1. She desires to amend her original petition filed herein on March 31, 1910. She adopts each and every allegation of said original petition as fully as though each allegation was copied herein at length,

except as to the value of Timberlake plantation, which she avers is $150,000.00, and Wigwam plantation, which she avers is $15,000.00, and so amends said valuation and asks the court to so find the facts.

Claimant therefore prays that this her amended petition be filed and judgment rendered in her favor against the United States for the sum of $165,000.00 as the value of said land and improvements, instead of the sum claimed in said original petition.

MARY E. HUGHES,
By WAITMAN H. CONAWAY,
Attorney of Record.

DISTRICT OF COLUMBIA, *Washington City, ss:*

Waitman H. Conaway, being by me first duly sworn, deposes and says that he is the attorney of record for the claimant Mary E. Hughes in the above-styled case; that he knows the contents of the foregoing amended petition, and believes the facts and allegations therein contained to be true, to the best of his knowledge, information, and belief.

WAITMAN H. CONAWAY,
Attorney of Record.

Taken, sworn to, and subscribed before me this 4th day of April, A. D. 1912.

[SEAL.] EDWARD KEEGIN,
Notary Public, D. C.

Mr. Randolph authorizes me to take acknowledgment.

8 III. *Traverse.*

Filed May 23, 1912.

In the Court of Claims of the United States.

December term, A. D. 1911.

MARY E. HUGHES
vs.
THE UNITED STATES. } No. 30606.

And now comes the Attorney General on behalf of the United States, and answering the petition of the claimant herein denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

JOHN Q. THOMPSON,
Assistant Attorney General.

9 IV. *Argument and submission of case.*

On the 23rd day of May, 1912, this case came on to be heard. Mr. Waitman H. Conaway was heard for the claimant, Mr. W. W. Scott was heard for the defendants, and the case was submitted.

10 V. *Findings of fact and conclusion of law.*

Filed June 17, 1912.

MARY E. HUGHES
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

From time immemorial the flood waters of the Mississippi River during the highest stages thereof, when not contained within the low-water banks of the river, naturally found outlet below Cairo into the St. Francis Basin, and below the highlands near Helena, Ark., in the White River, Yazoo, Tensas, Atchafalya, and Pontchartrain Basins, and through the rivers draining these basins eventually into the Gulf of Mexico. The outlets and drains thus provided by nature were such as to accommodate said flood waters, and the lands of claimant were not overflowed as frequently before the outlets were closed by levee construction by the United States to improve the river navigation, and by the State and local authorities to protect and reclaim land subject to overflow in times of high water, and consequently were but little injured by said overflows.

From as far back as the records show the flood stages of the Mississippi River, the high-water bed of that river was between the highlands on the east side and the highlands on the west side. The Timberlake plantation of the claimant in controversy in this suit is located within this boundary in Bolivar County, Miss.; that is, between the highlands on the Mississippi side of the river and the highlands on the Arkansas side of the river.

II.

Prior to the year 1883 the States and local authorities had constructed unconnected lines of levees for the protection and reclamation of lands subject to overflow from the mouth of Red River to the mouth of Arkansas and from the mouth of the Yazoo to the highlands below Memphis. The flood waters of 1882 destroyed miles of these levees.

11 Beginning about the year 1883 and continuing to the present time the officers and agents of the United States, pursuant to an act of Congress creating the Mississippi River Commission and

the other acts amendatory thereof, and for the improvement of the Mississippi River for navigation adopted a plan, the so-called Eads plan, and in consequence thereof have projected and constructed and maintain, and are now engaged in constructing and maintaining, certain lines of levees on both sides of the river at various places for various distances from Cairo, Ill., to near the Head of the Passes, a distance of 1,050 miles by river from Cairo, and the local authorities or organizations of the States bordering along the river on both sides from Cairo to the Gulf have before and since 1883 constructed and are now constructing and maintaining certain lines of levees at various places and of various lengths for the purpose of protecting and reclaiming lands within their respective districts from overflow in times of high water.

The levee lines so constructed by the United States and local authorities have been joined by the United States, thus giving a continuous line of levees as contemplated by the Eads plan, with the result that the flood waters of the Mississippi River to a great extent are confined within and between said levee lines and encompassed within a narrower high-water channel than heretofore, acquired an increased velocity and higher elevation, and the current thereof has become stronger and more forceful.

The plan of the officers and agents of the United States so acting was to increase said velocity and scouring power of the water and to scour and deepen the channel of the Mississippi River and thereby improve it for navigation, and the purpose of the officers and agents of the State and local authorities constructing lines of levees at various points along and on both sides of the river was to reclaim and to protect land from overflow in times of high water. By so doing the waters being thus confined within a narrower compass, as above indicated, have attained a higher elevation of approximately 6 feet in times of high water.

III.

The act of Congress, March 3, 1881, carrying the first appropriation by the United States provided that no portion of the appropriation should be used in the repair or construction of levees for the purpose of preventing injury to land by overflows, or for any other purpose, except as a means of deepening and improving the channel, in the interest of navigation.

The subsequent acts of Congress of January 19, 1884; July 5, 1884; August 5, 1886; July 31, 1888; and March 3, 1891, also provided that no portion of the appropriation should be expended for the purpose of reclaiming lands, or preventing injury to lands or private property by overflow, and the commission was authorized to use said money in building levees, if in their judgment it should be done, as a part of their plan to afford ease and safety to the navigation and commerce of the river and to deepen and improve the channel.

IV.

Before the creation of the Mississippi River Commission by act of Congress and the adoption of the Eads plan as aforesaid, the levee lines along the Mississippi River theretofore constructed by
12 State and local authorities consisted of a broken chain of levees of insufficient height and strength to confine the flood waters and had been built without regard to a uniform grade line. The United States then caused a survey and report to be made by its officers and agents showing the condition and location of levee lines theretofore constructed by State and local authorities as they then existed. This survey suggested a proposed continuous system of levees from Cairo to the Head of the Passes. In many instances it was a blanket survey which encompassed and took in the lines of levee theretofore constructed by State and local authorities as above stated. The project recommended by the Mississippi River Commission adopting the Eads plan for the systematic improvement of the river from Cairo to the Head of Passes was adopted by act of Congress approved March 3, 1881.

The United States then undertook the projection and completion of a continuous line of levees from Cairo to the Head of the Passes, as suggested by this survey and the Eads plan and as recommended by the Mississippi River Commission, and, in furtherance of that plan and as a part of and supplementary thereto, adopted to their use and is now using the levees theretofore constructed by State and local authorities, thereafter making them much larger and stronger. Since that time levee construction, whether done by the United States or State and local authorities, has been under the direction and control of the Mississippi River Commission and in conformity with the grades and methods of construction adopted by said commission, and the present efficiency of the levee system has been largely due to this fact. The extension of the levee system by the United States from Cape Girardeau, Mo., to the Head of the Passes was authorized by acts of Congress in 1906 (34 Stat. L., p. 208).

V.

From Cairo, Ill., to near the mouth of the Yazoo River, just north of Vicksburg, the Mississippi River is practically leveed on both sides, except on the east side where the highlands abut on or near the river in Kentucky and Tennessee (from Port Jefferson, Ky., to a short distance south of Memphis, Tenn.), and thence on the west side to near the Head of the Passes, or to a point 1,050 miles by the river from Cairo, and on the east side from Baton Rouge to the same point near the Head of the Passes, leaving a gap in the line of levees of 234 miles in length, from the mouth of the Yazoo River to Baton Rouge, unleveed, where the foothills hug closely to the east bank of the river and serve as levees.

The extension of the general levee system by the United States and the local authorities since the United States adopted to its use and assumed "permanent control" of the levees theretofore constructed by State and local authorities has resulted in an increased elevation of the general flood levels, which subjects the claimants' lands to deeper overflow than they were subject to formerly or would be subject to now if the levee system were not in existence, and consequently has destroyed its value for agricultural and grazing purposes, causing its abandonment. The immediate cause of the deeper overflow of claimants' land is the increased elevation of flood heights, which is the result of the general confinement of the flood discharge by the levee system as a whole.

13 VI.

During the flood waters of 1882 the levees failed throughout the length of the river. In 1884 the crevasses were still open in the basins. In 1886 crevasses were open in the upper Tensas district and the levees practically intact in the lower Yazoo district opposite the upper Tensas. In 1887 all crevasses were closed. In 1890 there were eight crevasses in the upper Tensas and seven in the lower Yazoo districts. In 1891 all 1890 crevasses were closed and the flood waters of that year made one crevasse in the upper Tensas and one in the lower Yazoo districts. In 1892 all crevasses were closed, but the flood waters made six crevasses in the levees located along the stretch of river in the upper Tensas district. In 1893 all crevasses were closed, but the flood waters of that year made four crevasses. In 1897 all crevasses were closed, but the flood waters of that year made five crevasses in the lower Yazoo district in Mississippi. From 1898 to 1902 there were no crevasses, and only one crevasse in the upper Tensas district in 1903, and all crevasses closed from 1904 to 1910.

VII.

In consequence of the closing of the natural basins, outlets, and crevasses by the United States and the State and local authorities, as aforesaid, the channel of said river has been scoured and many waste and overflowed lands on both sides of said river behind said levees have been incidentally reclaimed and are now protected from overflow in times of high water, and vast benefit has accrued to the States of Illinois, Kentucky, Tennessee, Mississippi, Arkansas, and Louisiana by reason of said levee construction and to the landowners of the States behind said levees, but that the land of claimant, situated between said levees and on the outside thereof, between the line of levees and the river, in the present narrowed high-water channel thereof, and not protected thereby, as hereinafter more fully described, has been, and is now, subjected to repeated and destructive overflows which have rapidly and permanently covered said land with heavy deposits of sand, causing it to grow up with willows and

underbrush, rendering it unfit for cultivation, destroying its market value, and compelling its abandonment, it having no value unless it would be for speculative purposes only for the timber that may hereafter grow thereon.

VIII.

That the levees as constructed by State and local authorities, and afterwards adopted and added to by the Federal Government as hereinbefore stated, were located at places considerably back from the river bank so as to leave between them and the river, or between the levees on both sides of the river, lands which were not affected by them unless the flood tide of the river was permanently raised. The land in question in this case belonged to that class.

The construction of the levees made the high-water bed from 20 to 35 miles narrower and was followed by increased flood heights, which made it necessary to build the levees on both sides of the river higher and stronger from time to time. The grade established
14 by the Mississippi River Commission to which levees should be built was from 2 to 5 feet higher than the highest known water until June, 1910, when that grade was changed by the Mississippi River Commission to 3 to 5 feet above the highest known water, and since then the levees have been raised or constructed in accordance with that grade.

IX.

TIMBERLAKE PLANTATION.

Prior to the construction of the Huntington Short Line levee by the United States the waters of the Mississippi River did not overflow and submerge the Timberlake plantation hereinafter described at such frequent intervals and for such duration as to disturb the claimant in the profitable use, enjoyment, and possession thereof or so as to materially affect its cultivation, productive capacity, or market value. It was then suitable for the purpose of raising thereon, and there was profitably raised thereon, crops of cotton, cotton seed, corn, hay, and other products. Since the completion of said Huntington Short Line levee by the United States, placing the plantation of claimant between the old and new levee, in the restricted and narrower high-water channel of the river, the rises in the water of said river, by reason of the water being thus confined and restricted in its flow, have been, and are now, occurring at such frequent intervals and for such duration as to prevent the claimant from raising any kind of a crop thereon; the buildings have become untenantable and uninhabitable; the fencing washed away; the land covered with superinduced additions of water, earth, sand, and gravel to a depth of from 3 to 12 feet; said land has since grown up in willows, cottonwood, underbrush, and weeds so as to render it valueless to her; to destroy its market value; and to compel its abandonment.

The claimant, Mary E. Hughes, whose former name was Mary E. Burk, owns and possesses that certain tract of land and cotton plantation situated in the State of Mississippi and county of Bolivar, on the Mississippi River, opposite to Arkansas City, known as the Timberlake plantation; bounded on the north and west by the Mississippi River, on the east by lands of Chappe, Wilkinson, and Shelby, and on the south by lands of Duncan & Leopold Lewey, containing 1,500 acres of cleared lands, 1,300 acres woodland, and 200 acres of batture, more particularly described as follows:

Those several tracts of land lying in section two (2), three (3), four (4), five (5), in township twenty (20), range ten west, constituting Timberlake plantation, and embracing lots one (1) and two (2) of Timberlake division, being the same land conveyed or intended to be conveyed to A. B. Pittman by Mrs. Mary Clark, wife of M. Lewis Clark, and John Churchill, trustee, and also being the same lands decreed to be sold by final decree of the Circuit Court of the United States for the Southern District of Mississippi in the case of John Churchill and Mary Clark vs. Alfred B. Pittman, rendered at the November term, 1885, of said court; also the following lands in said Bolivar County commencing at the iron post between sections four (4) and five (5), township twenty, range ten west; thence running
15 south four 15/100 chains to post; thence south 88 degrees 17 minutes west 189.30 chains to the river bank; thence following said river bank up to a post between share No. two and three of the Timberlake plantation as described in the decree in cause No. 406 lately pending in the chancery court of said county of Bolivar; thence south 87 degrees 07 minutes east 66.90 chains to a point; thence south 87 degrees 07 minutes E. 103.13 chains to a post between shares No. two and three of said plantation, being the east corner of said shares two and three; thence south 36.70 to place of beginning, containing 744.01 acres of land more or less, and being the same lands conveyed by Charles Scott to A. B. Pittman in and by the deed dated January 23rd, 1883; also convey the following lands in said county of Bolivar: Lots two (2), three (3), four (4), five (5), six (6), seven (7), and eight (8) in section five, all of lot six (6) in section six (6), all of lot seven in section seven (7), all of lot eight (8) in section eight (8), and all of sections two (2), three (3), and four (4), and lot one (1) in section five (5), all of the above-described lands in township twenty, range ten (10) west.

X.

Prior to 1898 said lands (Timberlake plantation) were comparatively high and secure from overflow by the flood waters of the Mississippi River, except at long intervals, and the occurrence of such overflows did not materially affect their productive capacity or market value. Said lands were highly improved, well stocked with tenants and laborers, yielded large crops of cotton, cotton seed, corn,

hay, and other products, were located adjacent to what was formerly the town of Huntington, located between the Huntington Short Line levee and the river, since washed away by the flood waters of the Mississippi River, and deserted as a place of residence by the inhabitants some years after the building of the Huntington Short Line levee—1898–1900—was very valuable as plantation property, and was worth the sum of ninety thousand dollars ($90,000).

The claimant, Mary E. Hughes, obtained $12,000 from the Board of Mississippi Levee Commissioners, by judgment, for damages to the drainage of the Timberlake plantation into Black Bayou when it was thrown out by the construction of the Huntington Short Line levee in 1898–1900. This plantation is located in the vicinity of and opposite the Arkansas City gauge and was protected from overflow up until the time of the construction of the Huntington Short Line levee.

XI.

Prior to the year 1898 said Timberlake plantation was protected from overflow by the flood waters of the Mississippi River by a continuous levee line located in front of said lands along, by, and close to the river bank for its entire frontage, built by State and local authorities, and said plantations still remained valuable for plantation purposes, and up to that time had not been seriously injured in its use and enjoyment by the flood waters of said river.

About the year 1898 the United States surveyed and thereafter began to construct what was known as and now called the
16 Huntington Short Line levee, a new levee, about 15 feet high, located some distance back from the old levee, behind the land of claimant, thus placing and permanently locating said Timberlake plantation between the Huntington Short Line levee and the old levee in the narrower high-water channel and bed of the river, placing an additional burden and servitude thereon and subjecting said property to more frequent and destructive overflows and the force and scouring power of the high-water current of said river. After the completion of the Huntington Short Line levee a high water came in the river during the year 1903 and because of a break in said old levee the water of said river began to flow onto and over the plantation of claimant, then located between the old levee and the Huntington Short Line levee, and remained standing on and over said land to a great depth after the high waters receded, and because of the great pressure of the water thus confined, standing against said Huntington Short Line levee, threatening its destruction by breaking through, the United States then caused the old levee to be blown up by dynamite in many places, so as to relieve the pressure of the water standing against the Huntington Short Line levee, and to save it, thus causing the water to rush over and across said land, injuring it for agricultural as well as all other purposes, greatly reducing its value.

XII.

In 1903 and since there were 150 laborers and tenants on said Timberlake plantation, about 65 head of mules, all necessary farming implements, 50 tenant houses, one large residence, one large storehouse, one large barn, gin house, blacksmith shop, and brick meat house, which were very valuable, and claimant ready and prepared to cultivate the entire property, but on account of the United States placing and permanently locating said plantation and property between said Huntington Short Line levee and said old levee, in the narrowed high-water channel of the river, and by blowing up the old levee, causing the water to flow onto and across said land with increased depth, velocity, current, and scouring power, and subjected to increased flood heights by being thus placed between said levees and said river, said buildings and property, as the result of the flood waters of 1907, 1908, 1909, and since, have become untenantable and uninhabitable, the fencing washed away, the land covered with superinduced additions of water, earth, sand, and gravel to a depth of from 3 to 12 feet, and said land has since grown up with willows, cottonwood, underbrush, and weeds, rendering it unfit for cultivation, agricultural purposes as well as all other purposes, causing the claimant to abandon it since the frequent, continuous, and destructive overflows of 1907, 1908, and 1909, it being also overflowed and inundated for the years 1910 and 1911.

XIII.

Each year since 1903 the claimant has been in the continuous, exclusive, and adverse possession of said property, exercising all the rights of ownership, attempting to cultivate said plantation, or a part thereof, but by reason of the frequent and destructive overflows of said property, as they have occurred, particularly for the
17 years 1907, 1908, 1909, and since, she has not been able to profitably use, occupy, or cultivate said land in any one year, and abandoned it for agricultural as well as all other purposes since said years 1907, 1908, and 1909, but maintains a caretaker thereon and in possession thereof at great expense in an effort to protect and use said property.

XIV.

Upon the foregoing facts the court finds as an ultimate fact, so far as it is a question of fact, that the effect of placing and permanently locating the Timberlake plantation of claimant between the Huntington Short Line levee and the old levee, and the river bank, was and is an act on the part of the United States intending to place, and which finally resulted in placing, the lands of claimant in the narrower highwater channel of the Mississippi River, subjecting it to more frequent and destructive overflows, and the forceful and destructive action of the current, placing an additional

burden and servitude thereon, which has finally resulted, since the years 1907, 1908, and 1909, in such serious and continuous interruption to the common and necessary use and enjoyment of said property, as to amount to a taking thereof by the United States under the fifth amendment to the Constitution.

WIGWAM PLANTATION.

XV.

Claimant owns and possesses a certain other tract of land and cotton plantation, situated in the State of Mississippi, county of Warren, on or near the Mississippi River, on the east bank, about two miles below the city limits of the city of Vicksburg, known as the "Wigwam plantation," more particularly described as follows:

Lots six (6) of section six (6), all that part of fractional section nine (9) north of the bayou; and east half (E. ½) of the southeast quarter (SE. ¼) of southwest quarter (SW. ¼) section eight (8), all in township fifteen (15), range three (3), containing 523 acres, more or less.

XVI.

Prior to the year 1890 said land from its natural situation was comparatively high and exempt from overflow by the flood waters of the Mississippi River, except at long intervals, and the occurrence of such overflows did not materially affect their productive capacity or market value. Said land was highly improved with tenants and laborers, yielded large crops of cotton, cotton seed, corn, hay, and other products, and was worth the sum of thirteen thousand five hundred dollars ($13,500).

XVII.

Said Wigwam plantation is located within the limits of that narrow strip of land lying between the Mississippi River and the highlands east of it, between Vicksburg and Baton Rouge, on the
18 east bank, where the highlands skirt very closely to the river bank and serve the purposes of levees, and is not protected by levee construction, as the expense of such levees would be out of proportion to the value of land to be protected, and they are not important to the improvement of said river for navigation.

XVIII.

The facts governing the action of the United States relative to levee construction within the limits of said strip of land mentioned in Finding XVII, have been found by this court in Mattie W. Jackson case, No. 18274, to which reference is made.

XIX.

As a result of the works of the United States when improving the Mississippi River in the interest of navigation, the said Wigwam plantation, since the year 1906, and particularly for the years 1907, 1908, and 1909, and since, has been overflowing at such frequent intervals and for such duration as to take from claimant the use, occupation, and enjoyment thereof and destroy its value; that 100 acres or more of said land have sand deposits permanently placed thereon as the result of said overflow, much of said land is grown up in willows and underbrush, rendering the residue thereof valueless for all purposes.

XX.

The claimant is the sole owner of said claims; no other action has been taken thereon, either in Congress, or by and before any of the department; and no assignment thereof, or interest therein, or any part thereof, has been made by her.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as conclusions of law—

(1) That the claimant is entitled to recover for the value of the Timberlake plantation described in findings IX to XIV, inclusive, the sum of ninety thousand dollars ($90,000) on the authority of the cases of United States v. Lynah, 118 U. S., 445; United States v. Grizzard, 219 U. S., 180; and Archer v. United States, 47 C. Cls., —, upon the payment of which judgment the claimant is to execute a good and sufficient deed for said lands to the United States.

(2) That the claimant is not entitled to recover for the value of the Wigwam plantation described in findings XV to XX, inclusive, and her petition as to said plantation is therefore dismissed on the authority of the case of Jackson v. United States, 47 C. Cls., —.

19 VI. *Judgment of the court.*

MARY E. HUGHES
v.
THE UNITED STATES. } No. 30606.

At a Court of Claims held in the city of Washington on the 17th day of June, 1912, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant and do order, adjudge, and decree (1) that the claimant, Mary E. Hughes, is entitled to recover of and from the United States for the value of the Timberlake plantation described in Findings IX to XIV, inclusive, the sum of ninety thousand dollars ($90,000), on the authority of the cases of United States v. Lynah, 118 U. S., 445;

United States v. Grizzard, 219 U. S., 180; and Archer v. United States, 47 C. Cls., —, upon the payment of which judgment the claimant is to execute a good and sufficient deed for said lands to the United States. (2) That the claimant, Mary E. Hughes, is not entitled to recover for the value of the Wigwam plantation described in Findings XV to XX, inclusive, and that her petition as to said plantation is, and the same is hereby, dismissed, on the authority of the case of Jackson v. United States, 47 C. Cls., —.

BY THE COURT.

20 VII. *Application of claimant for, and the allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 17th day of June, 1912, the claimant, by Waitman H. Conaway, her attorney of record, on the 17th day of June, 1912, make application for, and give notice of, an appeal to the Supreme Court of the United States, from the order of the court dismissing the petition as to the Wigwam plantation.

WAITMAN H. CONAWAY,
Attorney for Claimant.

Filed June 17, 1912.

Ordered, that the above appeal be allowed as prayed for.

BY THE COURT.

June 17, 1912.

VIII. *Application of defendants for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 17th day of June, 1912, in favor of claimant, the defendants, by their Attorney General, on the 17th day of June, 1912, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN Q. THOMPSON,
Assistant Attorney General.

Filed June 17, 1912.

Ordered, that the above appeal be allowed as prayed for.

BY THE COURT.

June 17, 1912.

21 Court of Claims.

MARY E. HUGHES
v.
THE UNITED STATES. } No. 30606.

I, Archibald Hopkins, chief clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-

entitled cause; of the findings of fact and conclusion of law; of the final judgment of the court; of the applications of the claimant and defendants for, and the allowance of, appeals to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 13th day of July, A. D. 1912.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk, Court of Claims.

(Indorsement on cover:) File No. 23293. Court of Claims. Term No. 718. Mary E. Hughes, appellant, vs. The United States. File No. 23294. Term No. 719. The United States, appellant, vs. Mary E. Hughes. Filed July 15th, 1912. File Nos. 23293, 23294.